

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

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4 JANE DOE,

5 Plaintiff,

6
7 -against- Case No. 1:18-cv-05436

8
9 HALSTEAD PROPERTY, LLC, HALSTEAD MANHATTAN, LLC
10 and AYO HAYNES,

11 Defendants.

12 -----X

13 December 23, 2019

14 TIME 10:42 a.m.

15
16 EXAMINATION BEFORE TRIAL of Ayo Haynes, a
17 Defendant herein, taken by the respective
18 parties, pursuant to Order, held at the offices
19 of Wagner Berkow, LLP, 1410 Broadway, 23rd
20 Floor, New York, New York, before Shechinah
21 Jackson, a Notary Public for and within the
22 State of New York.

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Also Present: Jane Doe

* * * * *

1 A. HAYNES

2 Q. Were you aware prior to -- strike
3 that.

4 Were you aware that Ms. Doe was and
5 is a lesbian?

6 A. Yes.

7 Q. When did you first become aware of
8 this?

9 A. I'm not sure of the year. I'll say
10 not long. I don't know the time reference,
11 but Jeff Lieberman and I -- I think I was
12 visiting Jeff Lieberman in his apartment and
13 he told me that she and Nina Binder, who was
14 the unit owner in eight, were in a
15 relationship or had been in a relationship.
16 So I would put that around late 2012.

17 Q. Why were you discussing Ms. Doe's
18 relationship status with Mr. Lieberman?

19 MR. SAULITIS: Objection to form.

20 A. It wasn't something that I asked. It
21 was something that came up in conversation
22 from Mr. Lieberman.

23 Q. This was from 2012 you said to the
24 best of your recollection?

25 A. Well she moved into the apartment in

1 A. HAYNES

2 MR. SAULITIS: Objection to form.

3 A. You said, is it industry practice
4 that Halstead --

5 Q. Does Halstead follow any industry
6 practice to financially vet buyers prior to
7 transmitting offers to sellers?

8 MR. SAULITIS: Objection to form.

9 A. Yes.

10 Q. Ms. Haynes, do you know who Barry
11 Minkin is? M-I-N-K-I-N.

12 A. Yes.

13 Q. Do you know who Christina Verrastro
14 is?

15 A. Yes.

16 Q. Who were are those individuals?

17 A. They purchased the apartment from Dr.
18 Champel.

19 Q. What was the -- strike that.

20 What offer did they, Mr. Minkin and
21 Ms. Verrastro initially make for the
22 apartment?

23 A. We'd have to check the exact number;
24 but I'm pretty sure it was 480, all cash.

25 Q. At the time that Mr. Minkin and Ms.

1 A. HAYNES

2 Verrastro submitted their -- made their
3 initial offer, did you ask for any
4 documentation from either both of them about
5 their financial qualifications?

6 A. Through their agent, yes.

7 Q. What kind of information did you
8 request?

9 A. The same that I requested of Ms. Doe
10 the revenue form from the Real Estate Board
11 of New York. And because they were paying
12 all cash, I did request a letter from their
13 financial advisor attesting to the fact they
14 can pay all cash.

15 Q. How did you make this request; if you
16 can recall? Was it in an e-mail?

17 A. To their agent.

18 Q. Did you receive any responsive
19 documents to this request?

20 A. Yes.

21 MS. KHINDRI: At this point, I'd
22 like to make a call, request for those
23 -- that documentation as that was not
24 produced to us during discovery.
25 Despite having requested any and all

1 A. HAYNES

2 -- approve list and could a building with
3 those, the numbers that I just spoke of, be
4 approved? And would a purchaser be able to
5 purchase or get a mortgage through Wells
6 Fargo.

7 Q. What was Mr. Perodin's response to
8 those questions?

9 A. He said that based on the number of
10 renter-occupied versus occupied, and the
11 financials, that it would be very difficult
12 for Wells Fargo to approve the building. And
13 he suggested that we try to get an all cash
14 offer to try to work with that process. And
15 that was communicated to Dr. Champel. And I
16 also gave Ms. Doe his number so she could
17 confirm what I spoke of with him herself.

18 Q. Are you aware of any other units in
19 the building whose purchase was funded in
20 whole or in part by any bank loan?

21 A. After resale?

22 Q. After resell, before resale.

23 A. So as discussed before, when there
24 were some units that purchased via financing
25 directly from the sponsor, and when the

1 A. HAYNES

2 sponsor was selling the units. Unit one, I
3 believe, was also financed through Wells.

4 Q. Unit one was -- did get a finance --
5 financing from Wells?

6 A. Yes.

7 Q. So when was this? Do you know when
8 this was?

9 A. When they purchased the apartments.

10 Q. And the purchaser didn't have any
11 difficulty getting financing at that time?

12 MR. SAULITIS: Objection to form.

13 A. I don't remember. But that was also
14 probably at least a year or maybe a few
15 months, six months to a year in advance of
16 that -- circumstances. Each purchase will
17 change the number of owners to renters.

18 Q. So am I correct in saying that your
19 opinion about Ms. Doe's ability to obtain
20 financing from a bank, was guided primarily
21 by Mr. Perodin?

22 A. Well, Mr. Perodin has several years
23 of experience in the industry, handling
24 mortgages solely in one of the largest
25 offices within our company. He also -- I

1 A. HAYNES

2 today, I spoke to one who is putting in an
3 offer of \$480,000. I'll let you know as soon
4 as I receive the offer in writing."

5 So my question is, did you receive a
6 written offer for \$480,000?

7 A. Yes.

8 Q. When did you receive this offer?

9 A. The next day.

10 Q. Did you receive a written offer?

11 A. I believe so, yes.

12 Q. Who made the offer?

13 A. I would have to check to see who this
14 offer is exactly from, but we had four offers
15 that end up materializing.

16 MS. KHINDRI: At this time, for
17 the record, I'm going to make a
18 request for all written materials,
19 documents, communications regarding
20 any and all offers for the apartment,
21 including an offer for \$480,000. To
22 the extent that we have not already
23 received those documents in the course
24 of defendants' document production.

25 MR. SAULITIS: Taken under

1 A. HAYNES

2 Q. Was that the offer of Mr. Minkin and
3 Ms. Verrastro?

4 A. After -- yes.

5 Q. Upon receiving each of these offers
6 from various buyers, did you request
7 documentation from each of those bidders
8 regarding financial status, revenue form, et
9 cetera, et cetera?

10 MR. SAULITIS: Objection to form.
11 You have to fill in et cetera, et
12 cetera. That's --

13 MS. KHINDRI: I will strike the et
14 cetera, et cetera portion.

15 Q. Did you ask -- for each of the offers
16 that you received following the open house,
17 did you ask that the buyers -- did you ask
18 the buyers to submit to you a completed
19 financial REBNY form?

20 A. Yes.

21 Q. Did they submit those forms?

22 A. Yes.

23 MS. KHINDRI: Again, I will
24 request the production of any and all
25 financial forms associated with

1 A. HAYNES

2 A. \$499,000, all cash.

3 Q. Was that -- was that subsequently
4 reduced? That purchase price subsequently
5 reduced?

6 A. Unfortunately, yes.

7 Q. What was it reduced to?

8 A. It was reduced to \$485,000 because
9 the Minkins felt that Ms. Doe would be
10 difficult to work with later on. She refused
11 to sign the estoppel agreement which gave her
12 lease over to the new purchasers. They
13 feared that they would have to hire a lawyer.
14 So the price was reduced \$15,000 or \$14,000.

15 Q. Wasn't it true that Ms. Doe had an
16 effective lease that was -- which had an end
17 date that was misrepresented on the listing?

18 MR. SAULITIS: Objection to form.

19 A. The effective date says there,
20 January 2018.

21 Q. Isn't it true that the reason the
22 purchase price was reduced was due to a
23 mistake as to the termination date for Ms.
24 Doe's lease?

25 MR. SAULITIS: Objection to form.

1 A. HAYNES

2 A. Is it -- sorry.

3 (The requested portion of the record
4 was read by the reporter.)

5 A. No, I would not.

6 Q. Did you ever inform Ms. Doe that she
7 could proceed with her offer if she were able
8 to obtain a guarantee that she'd be financed
9 in connection with the purchase of her unit
10 -- of unit four?

11 A. Can you read it back.

12 (Whereupon, the last question was
13 read back.)

14 A. Ms. Doe was never prohibited from
15 proceeding with her offer to offer her best
16 offer to obtain the apartment. Like anyone
17 else who came to see the apartment, she was
18 always encouraged to put in her highest offer
19 within the confines of what was countered to
20 her.

21 MS. KHINDRI: All right. Let's
22 take a minute.

23 (A brief recess was taken.)

24 (Whereupon, a portion of the
25 record was read back.)

1 A. HAYNES

2 there a time when she ever came back and
3 indicated that she did indeed wish to try to
4 stay in the bidding process?

5 A. Yes. But unfortunately, it was after
6 the deadline of the highest and best. And
7 Dr. Champel had already chosen, selected an
8 offer to proceed with.

9 Q. After you had -- strike that.

10 Did you have an open house for the
11 apartment after -- at any time after Dr.
12 Champel had already accepted an offer?

13 A. I had a showing for the person who
14 had won the offer.

15 Q. Ms. Haynes, I just want to go back to
16 something that you testified previously
17 regarding the reason that a contract price
18 for the apartment by the Minkins was reduced.

19 I hope I can just restate this,
20 summarize it without having to go back and
21 read exactly your testimony. But roughly, it
22 was because -- am I correct in saying that
23 according to your testimony, the reason the
24 purchase price was reduced was due to the
25 behavior, the conduct of Ms. Doe?

1 A. HAYNES

2 sold having to sign the estoppel certificate?

3 MR. SAULITIS: Objection to form.

4 Ms. KHINDRI: Strike that. I can
5 rephrase.

6 Q. Do you know of any requirement for
7 tenants in possession to sign an estoppel
8 certificate?

9 A. I'm not a lawyer. I wouldn't be able
10 to answer that.

11 Q. Do you believe the reason for the
12 contract -- strike that.

13 Do you believe that the reason that
14 the purchase price of that contract was
15 reduced was because of Ms. Doe's alleged
16 failure to sign the estoppel certificate?

17 MR. SAULITIS: Objection to form.

18 A. It was one of the reasons.

19 Q. What were the other reasons?

20 A. She refused to give access for a
21 walk-through.

22 Q. Anything else?

23 A. It was not an easy process with her.
24 And the process was being delayed. The
25 closing was being delayed. There was

1 A. HAYNES

2 obviously animosity on her part towards me
3 being a part of the walk-through process or
4 anything after that. So we could not gain
5 access.

6 And as I said before, that was enough
7 for them to feel there would be a problem
8 going forth.

9 Q. Do you think that --

10 MR. SAULITIS: Did you finish?

11 A. And the fact, mainly she was not
12 returning phone calls of Dr. Champel nor the
13 agent for the new purchasers or returning
14 their e-mails.

15 Q. Do you think that because there was
16 an error regarding the validity of Ms. Doe's
17 lease, which could have been a reason that
18 the purchase price was reduced?

19 MR. SAULITIS: Objection to form.

20 Q. Do you think that could have been a
21 reason?

22 MR. SAULITIS: Objection to form.

23 A. Do you have a need to request that
24 question?

25 Q. I'll rephrase.

1 A. HAYNES

2 Do you think one of the reasons the
3 purchase price was reduced could have been
4 because of an error in the start and ending
5 dates of Ms. Doe's lease?

6 MR. SAULITIS: Objection to form.

7 A. I don't believe so.

8 MS. KHINDRI: Mark this as 6.

9 (Whereupon, Haynes Exhibit 6,
10 E-mail was marked for identification,
11 as of this date by the reporter.)

12 MS. KHINDRI: I'll just note for
13 the record, I believe this was that
14 the document that's been marked as
15 Haynes Exhibit number 6, has been
16 produced by plaintiff in the course of
17 production. However, I'm unable to
18 locate the specific document with the
19 Bates numbering.

20 (Whereupon, the witness perused
21 the aforementioned document.)

22 Q. Ms. Haynes, have you had a chance to
23 review the e-mail?

24 A. Yes.

25 Q. Based on the e-mail that you just

1 A. HAYNES

2 A. I told her by e-mail. We spoke on
3 the phone. Yes.

4 Q. Did you recommend that she increase
5 her offer to any specific amount?

6 A. I told her the offers that we had and
7 where she needed to come in at. Even in the
8 exhibit that she presented, we were
9 countering her lower than the fair market.
10 People could come to the open house. She was
11 still giving -- being given numbers that were
12 to her advantage and less than other people.

13 Q. What do you mean, "less than other
14 people"? What do you mean by that?

15 A. In the exhibit presented earlier, I
16 talk about how we were going to counter the
17 offer with 490 and we would counter Ms. Doe
18 with 485. We'd have to look back at the
19 exhibit.

20 Q. I believe that was promised on
21 receiving an actual written offer?

22 A. No.

23 Q. Exhibit 2.

24 A. Second to last paragraph.

25 Q. Right. The second paragraph of that

1 A. HAYNES

2 e-mail states "Regarding Ms. Doe's offer of
3 \$444,000, you know that it is low compared to
4 the one for \$480,000 that will come in
5 tomorrow. I will counter Ms. Doe's offer
6 with \$485,000 and see if she will come up to
7 that number or something close to that
8 number."

9 The way I interpret that is any
10 counter would be contingent on an offer
11 actually coming in.

12 But regardless, did you -- at any
13 point after this e-mail, from you to Dr.
14 Champel on May 2nd, did you at any point
15 after that e-mail, counter -- speak to Ms.
16 Doe and advise her that you had received an
17 offer for \$485,000?

18 MR. SAULITIS: 400.

19 Q. For \$400,000.

20 MR. SAULITIS: Objection to form.

21 A. Please repeat the question.

22 (The requested portion of the record
23 was read by the reporter.)

24 Q. Did you ever -- after the open house,
25 where you anticipated getting offers in for

1 A. HAYNES

2 \$480,000, at least, did you ever go back to
3 Ms. Doe and ask her to submit an offer
4 greater than \$480,000?

5 A. That's what -- I'll refer back to "I
6 will counter Ms. Doe's offer with \$485,000."

7 Q. But did you?

8 A. Yes.

9 Q. Do you recall how you countered that
10 to Ms. Doe? Did you speak to her on the
11 phone? Did you write her an e-mail?

12 A. I don't remember, but you can look at
13 the records.

14 Q. Well, I'm asking because we don't
15 have any record of there being a counter.

16 So could it have been by telephone?

17 A. It could have been, yes.

18 Q. Text message, maybe?

19 A. Probably telephone or e-mail.

20 Q. After your conversation and
21 correspondences with AJ Johnson, were you
22 satisfied with any concerns you may have had
23 about Ms. Doe's financial ability to purchase
24 the apartment and obtain financing in
25 connection with her purchase?

1 A. HAYNES

2 this in some kind of written material of any
3 kind?

4 MR. SAULITIS: Objection to form.

5 A. Yes. It is something that is taught
6 to you at real estate school. You have a
7 financial fiduciary responsibility to ensure
8 that you are representing your client in the
9 highest regard. Anyone could make an offer
10 for an apartment, not everyone is qualified
11 to purchase the apartment.

12 Q. Are you specifically instructed to
13 review financial documentation?

14 MR. SAULITIS: Objection to form.

15 A. Dr. Champel left it to me and he said
16 it in his e-mail. "I trust you. I go with
17 what you inform me." And I gave him ever
18 single information about the purchasers in
19 regard to their finances so he can make a
20 final decision. I collect, I give over, and
21 he makes a decision.

22 Q. So would it be fair to say that you
23 use your discretion in deciding what
24 documents and information to request of
25 purchasers during the course of the bidding

1 A. HAYNES

2 here, this is the amount that you'll need to
3 bid." Did you ever --

4 A. That is not how a highest and best
5 works. Once you exclude yourself, you're out
6 of the process.

7 Q. Isn't it true that Ms. Doe came back
8 in around, first or second week of May, and
9 increased her offer to 470?

10 MR. SAULITIS: Objection to form.

11 A. Was that after the highest and best?

12 Q. I'm not sure when the highest and
13 best was.

14 A. If it was after the highest and best,
15 it would be too late.

16 Q. What does the highest and best mean?

17 A. It means that anybody who has
18 interest in purchasing the apartment, has a
19 deadline that was given to them to submit
20 their highest and their best offer to
21 purchase the apartment. There is no
22 renegotiating after that. Once a seller
23 accepts an offer, then it goes to the
24 attorney. After the transaction summary is
25 completed, the attorneys get the contract